

## **REMARKS**

Claims 12, 13, 31, and 32 were previously canceled. With the present Amendment, claim 27 has been canceled without prejudice, and claims 1, 8, 14, 15, 17, 23-26, and 28-30 have been amended. Claims 1-11, 14-26, and 28-30 are pending in the application.

FIG. 8 has been amended.

Reconsideration and withdrawal of the rejections are respectfully requested in view of the following remarks.

### **I. Drawings**

The Examiner has objected to the drawings because they do not show a processor. The claims reciting a processor have been amended to instead recite a control system. Support for this amendment is found on page 18, lines 5-11 of the originally filed application.

FIG. 8 has been amended to show a control system.

The Applicant respectfully requests that the objection to the drawings be withdrawn.

### **II. Rejections Under 35 U.S.C. § 103**

#### **A. Miles in view of Burton**

Claims 8-11, 14, 15, 17-20, 24, and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton.

Claims 8, 14, and 17 have been amended to recite a forehead support extending from a mask body and adapted to contact a forehead surface of a patient during use, the forehead support having a plurality of sensors located thereon for detecting electrophysiological signals of the patient. These features are not taught or suggested by Miles in combination with Burton. Therefore, claims 8, 14, and 17 are not obvious over Miles in view of Burton. Claims 9-11 are dependent on claim 8; claims 15, 24, and 25 are dependent on claim 14; and claims 18-20 are dependent on claim 17. Therefore, claims 9-11, 15, 18-20, 24, and 25 are also not obvious over Miles in view of Burton.

Consequently, the Applicant respectfully requests that the rejections of claims 8-11, 14, 15, 17-20, 24, and 25 be withdrawn.

**B. Miles in view of Burton and further in view of Cui et al.**

Claims 21 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Cui et al.

Claim 17 has been amended to recite providing a forehead support extending from a mask body and adapted to contact a forehead surface of a patient during use, the forehead support having a plurality of sensors located thereon for detecting electrophysiological signals of the patient. These features are not taught or suggested by Miles in combination with Burton and Cui et al. Claims 21 and 22 are dependent on claim 17. Therefore, claims 21 and 22 are not obvious over Miles in view of Burton and Cui et al.

Consequently, the Applicant respectfully requests that the rejections of claims 21 and 22 be withdrawn.

**C. Miles in view of Genger et al. and further in view of Burton**

Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Genger et al. and further in view of Burton.

The Applicant respectfully asserts that Genger et al., which is PCT Publication No. WO00/66209, is not properly cited as prior art, because the priority date of the present application is prior to the publication date of Genger et al.

As discussed in MPEP section 706.02(f), if an international application has an international filing date prior to November 29, 2000, "both the WIPO publication and the U.S. publication, published from an international application that was filed prior to November 29, 2000, do not have any 35 U.S.C. 102(e) prior art date. According to the effective date provisions as amended by Pub. L. 107-273, the amendments to 35 U.S.C. 102(e) and 374 are not applicable to international applications having international filing dates prior to November 29, 2000. The application publications can be applied under 35 U.S.C. 102(a) or (b) as of their publication dates." (MPEP section. 706.02(f), Example 6.)

The international filing date of Genger et al. is May 4, 2000. Therefore, Genger et al. does not have a 35 U.S.C. 102(e) prior art date. Consequently, the relevant date for prior art purposes is the PCT publication date, which is November 9, 2000. The priority date of the present application is December 16, 1999, which is an earlier date than the prior art date of Genger et al. (November 9, 2000). Accordingly, Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejection of claim 1 be withdrawn.

**D. Miles in view of Burton and further in view of Genger et al.**

Claims 27-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Genger et al.

Claim 27 has been canceled.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejections of claims 28 and 29 be withdrawn.

**E. Miles in view of Genger et al. and further in view of Burton and Kwok**

Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Genger et al. and further in view of Burton and Kwok.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejections of claims 2 and 3 be withdrawn.

**F. Miles in view of Genger et al. and further in view of Burton, Kwok and Cui et al.**

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Genger et al. and further in view of Burton, Kwok and Cui et al.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejection of claim 4 be withdrawn.

**G. Miles in view of Genger et al. and further in view of Burton, Kwok, Cui et al., and Durousseau**

Claims 5 and 7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Genger et al. and further in view of Burton, Kwok, Cui et al., and Durousseau.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejections of claims 5 and 7 be withdrawn.

**H. Miles in view of Genger et al. and further in view of Burton and Brown**

Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Genger et al. and further in view of Burton and Brown.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejection of claim 6 be withdrawn.

**I. Miles in view of Burton and further in view of Brown**

Claim 16 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Brown.

Claim 14 has been amended to recite a forehead support extending from a mask body and adapted to contact a forehead surface of a patient during use, the forehead support having a plurality of sensors located thereon for detecting electrophysiological signals of the patient. These features are not taught or suggested by Miles in combination with Burton and Brown. Claim 16 is dependent on claim 14. Therefore, claim 16 is not obvious over Miles in view of Burton and Brown.

Consequently, the Applicant respectfully requests that the rejection of claim 16 be withdrawn.

**J. Miles in view of Burton and further in view of Brown**

Claim 23 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Brown.

Claim 17 has been amended to recite providing a forehead support extending from a mask body and adapted to contact a forehead surface of a patient during use, the forehead support having a plurality of sensors located thereon for detecting electrophysiological signals of the patient. These features are not taught or suggested by Miles in combination with Burton and Brown. Claim 23 is dependent on claim 17. Therefore, claim 23 is not obvious over Miles in view of Burton and Brown.

Consequently, the Applicant respectfully requests that the rejection of claim 23 be withdrawn.

**K. Miles in view of Burton and further in view of Tripp**

Claim 26 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Tripp.

Claim 17 has been amended to recite providing a forehead support extending from a mask body and adapted to contact a forehead surface of a patient during use, the forehead support having a plurality of sensors located thereon for detecting electrophysiological signals of the patient. These features are not taught or suggested by Miles in combination with Burton and

Tripp. Claim 26 is dependent on claim 17. Therefore, claim 26 is not obvious over Miles in view of Burton and Tripp.

Consequently, the Applicant respectfully requests that the rejection of claim 26 be withdrawn.

**L. Miles in view of Burton and further in view of Genger and Tripp**

Claim 30 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miles in view of Burton and further in view of Genger and Tripp.

As discussed above under section II.C., Genger et al. is not properly cited as prior art in this case.

Consequently, the Applicant respectfully requests that the rejection of claim 30 be withdrawn.

**III. Conclusion**

In view of the above, applicant believes the pending application is in condition for allowance. Reconsideration and allowance of the pending claims are respectfully requested.

If an extension of time fee or any other fee is due, please charge Deposit Account 023732 from which the undersigned is authorized to draw.

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Respectfully submitted,

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